



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168670

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 14, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment for August, September, and October 2014, and April, May, June, and July 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. In July 2015 the agency received an anonymous tip that the petitioner's boyfriend, J.Y. was living in the petitioner's home for the past two years. The tipster stated that J.Y. is an over the road truck driver, but when he is not on the road, he is home with the petitioner and their children.
3. The agency referred the case to O'Brien and Associates for further investigation. Investigator Ken [REDACTED] worked the case. Investigator [REDACTED] reviewed records including CCAP, addresses, and a lease. He also interviewed neighbors, the petitioner's landlord, and the petitioner's ex-boyfriend. The neighbors all stated that the petitioner's boyfriend was an over the road truck driver who had been living with the petitioner and their children for the past two years. Two of the neighbors said that there was a short period of approximately three weeks when J.Y. had moved out, and the petitioner asked the neighbors to watch her home. This coincides with the ccap record, which shows that in June 2015 the petitioner filed a Restraining Order against J.Y. The Restraining Order was dismissed two weeks later.
4. Investigator [REDACTED] learned from the petitioner's landlord that another rental company had contacted him for a reference for J.Y. He learned that J.Y. had rented a different apartment from November 1, 2014 through March 31, 2015. The lease went through October 31, 2015, but J.Y.'s landlord and J.Y. confirmed that J.Y. moved out March 31, 2015. At the conclusion of this investigation, the agency did not include this period in the overpayment.
5. On August 31, 2015 the agency sent the petitioner an overpayment notice stating that she was overpaid \$3,997.00 in FS benefits for the period of August 11, 2015 through July 31, 2015. The FS overpayment was as follows: \$460 in August 2014, \$680 in September 2014, \$254 in October 2014, \$254 in November 2014, \$254 in December 2014, \$251 in January 2015, \$214 in February 2015, \$214 in March 2015, \$237 in April 2015, \$237 in May 2015, \$505 in June 2015, and \$505 in July 2015. This was under claim number [REDACTED].
6. On August 31, 2015 the agency sent the petitioner an overpayment notice stating that she was overpaid \$505 in FS benefits for August 2015. This was under claim number [REDACTED].
7. The petitioner's household's monthly gross income including J.Y.'s income was as follows: \$4,167.33 in August 2014, \$4,167.33 in September 2014, \$6,441.33 in October 2014, \$6,543.11 in April 2015, \$6,743.11 in May 2015, \$5,798.13 in June 2015, \$5,798.13 in July 2015, and \$5,798.13 in August 2015.
8. On September 17, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

The only issue is whether the petitioner's boyfriend was living with her between August and October 2014, and again from April through June of 2015. The petitioner does not dispute the calculation of the overpayment or any of the amounts used to calculate the overpayment including gross income or any of the deductions.

I find that J.Y. was living with the petitioner during the majority of the alleged overpayment periods. The only time that I find he was not living with the petitioner is in June 2015, otherwise, he was living there during the remaining disputed periods. In June 2015 the petitioner filed a restraining order against J.Y. The restraining order was ultimately dismissed two weeks later. The petitioner and her boyfriend testified

that they had a fight over Memorial Day weekend that prompted the restraining order. The restraining was dismissed near the end of June 2015.

The agency has shown that the petitioner's boyfriend, J.Y. was living with the petitioner from August through October 2014, January through May 2015, and August 2015. The agency hired a private investigator. The investigator spoke to three neighbors. All three neighbors stated that the petitioner had a boyfriend who was an over the road truck driver who had been living with her for the last two years. One neighbor said that a few months before speaking to the investigator, the petitioner had kicked her boyfriend out, and had her to watch the house for her boyfriend. This time period would have coincided with June 2015 when the petitioner filed a restraining order against her boyfriend. The neighbor went on to say that within three weeks the boyfriend was back living in the home. This further coincides with the dismissal of the restraining order.

The landlord also stated that the boyfriend was living with the petitioner. The landlord disclosed that a woman called him as a reference when the boyfriend was looking to rent another apartment. The petitioner has shown another lease, and the agency no longer includes that time period in the overpayment.

The petitioner's ex-boyfriend said that J.Y. parks his truck in the petitioner's driveway or in a different driveway close to the petitioner's house, and sleeps in the truck. I do not find this statement credible. Using my common sense and everyday life experience, I do not believe that he slept in his truck in the middle of winter in Wisconsin when his girlfriend's warm bed was available inside her apartment. It would be more likely that he stayed with friends as he and the petitioner testified. That testimony is inconsistent with the ex-boyfriend's statement. I believe that the ex-boyfriend's statement was meant to protect the petitioner. They seem to have a good relationship as he has watched the children while she has gone on the road with the new boyfriend. His protective statement does not make sense and is inconsistent with the petitioner and J.Y.'s testimony. This shows that the agency, neighbors, and landlord are correct, and that the boyfriend was living with the petitioner during the overpayment periods. The only exception is in June 2015 as discussed above.

I do not find the petitioner and her boyfriend's testimony credible in any other respect. Their testimony is self-serving. J.Y. conveniently states that he was staying with friends when he was not on the road. They say that he was staying with friends, but with the exception of June 2015, they provide no address of friends' houses where he was staying. They provide no mail sent to these friends' houses. The record was left open for them to submit police reports. They failed to submit those reports. Regardless, I do not believe that these reports would have supported the petitioner's case. Even if they had fights where police were called, these fights would not have shown that J.Y. moved out of the home. Given the evidence presented, I find that J.Y. was in the petitioner's home from August 2014 through October 2014, April 2015 through May 2015, and July 2015 through August 2015.

The overpayment notice regarding claim number [REDACTED] included as an exhibit states that there was an overpayment from August 2014 through July 2015. The agency agreed that the petitioner's boyfriend was not living with the petitioner from November 2014 through March 2015. I have further concluded that he was not living with the petitioner in June 2015. Thus, the agency will have to issue a new notice that reflects those changes.

CONCLUSIONS OF LAW

The agency correctly established a FoodShare (FS) overpayment for August, September, and October 2014, and April, May, July, and August 2015. The agency incorrectly established an overpayment for June 2015. The total amount of the overpayment is \$2,875.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to issue a new notice of FS Overissuance for claim number [REDACTED]. The agency shall include August 2014, September 2014, October 2014, April 2015, and May 2015 on that notice. No other months shall be included on that notice. The notice regarding claim number [REDACTED] for August 2015 is correct. The agency shall comply with this order within 10 days of the date of decision. In all other respects this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability